IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

W.P.(C).No. 3973 of 2007(W)

PETITIONER:

KALIYAPPAN, AGED 59 YEARS,
S/O.SANKILI MADAN, 11/86, ALATHOOR MASI,
MARAYOOR VILLAGE.

BY ADV. SRI.GEORGE MATHEW

RESPONDENT:

K.E.ABEAL, S/O.ITTIYAVIRA,
KOTTAKANAYIL HOUSE, KUROOR KARA,
KOTHAMANGALAM.

BY Sr. GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.3973 OF 2007

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Dated this the 7th day of February 2007

JUDGMENT

The challenge in this writ petition is against Ext.P3 order passed by the execution court which reads as follows:

> "No stay order from the appellate court. The decree was passed as early as on 27-11-2001. It is more than 5 years elapsed after the disposal of the suit.
>
> The judgment debtor was served with a notice of this E.P. on 13-11-2003. He did not turned up till this time.
>
> Hence I find no force in the submission of the judgment debtor to stay the execution proceedings. So this petition lack bonafides and merits is only to be dismissed. I do accordingly.
>
> The petition stands dismissed. No costs."

Counsel for the petitioner submits that the decree was passed ex parte and against dismissal of the petition to set aside ex parte decree, appeal has been filed before the District Court, Thodupuzha along with the petition to condone the delay of 235 days and till delay condonation petition is disposed of by the

District Court stay may be ordered. All the same, he submits that even to set aside ex parte decree petition was filed with a delay of 610 days.

In the circumstances, I am of the view that the execution court was justified in not staying the execution proceedings. There is no merit in this writ petition and this writ petition is dismissed.

K.P.BALACHANDRAN, JUDGE

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